

**NATIONAL CRIME PREVENTION AND PRIVACY COMPACT
COMPACT COUNCIL MEETING
WASHINGTON, D.C.
OCTOBER 10-11, 2000**

MEETING REPORT

The meeting of the Compact Council was called to order at 9:00 a.m. on October 10, 2000, at the Omni Shoreham Hotel, Washington, D.C., by Chairman Wilbur Rehmann. Chairman Rehmann welcomed everyone to the meeting and reflected on the Council's first year's accomplishments.

Mr. Emmet Rathbun, FBI Compact Officer, called the roll of the Compact Council members. The following Compact Council members, or their proxies, were in attendance:

State Compact Officers:

- Mr. Dennis DeBacco, Nevada Highway Patrol
- Mr. Paul Heppner, Georgia Bureau of Investigation
- Mr. Wilbur Rehmann, Montana Department of Justice
- Ms. Donna Uzzell, Florida Department of Law Enforcement
- Mr. Terrance Hoil, Iowa Division of Criminal Investigation
- Major Mark Huguley, South Carolina Law Enforcement Division
- Lt. Col. Marjorie Kolpa, Connecticut State Police
- Mr. Allan Stanley, Colorado Bureau of Investigation

Chief Administrator of Non-Compact State:

- Lt. Col. Jeffrey Harmon, Maine State Police

State/Local Noncriminal Justice Agency Representative:

- Ms. Janet Jessup, New Mexico Gaming Control Board

State/Local Criminal Justice Agency Representative:

- Lt. Clifford Daimler, Oregon State Police

Federal Noncriminal Justice Agency Representative:

- Ms. Pam Cannavan, (Proxy for Ms. Kathy Dillaman), Investigative Services, Office of Personnel Management

Federal Criminal Justice Agency Representative:

- Inspector John Swanson, U.S. Postal Inspection Service

Advisory Policy Board Representative:

- Mr. William Casey, Boston Police Department

Federal Bureau of Investigation Representative:

- Mr. David Loesch, FBI CJIS Division

Chairman Rehmann welcomed the new members and distributed copies of the Attorney General's appointment letters making them official members of the Compact Council. A few weeks prior to the meeting, Chairman Rehmann forwarded for comment

the draft minutes from the May meeting in Atlanta. Receiving none, Chairman Rehmann declared the minutes approved as drafted.

Chairman Rehmann then reported on action items from the May meeting and correspondence responses received. The responses included an acknowledgment of the FBI's receipt of Chairman Rehmann's request for independent counsel for the Compact Council and the Department of Justice's anticipated review of this request by October 2, 2000; however, as of the meeting date no DOJ response has been received. Concerning the Council's request for liability coverage under the Federal Tort Claims Act (FTCA), the DOJ opinion received stated that the Council members are not Federal employees for purposes of the FTCA. DOJ did offer, though, "to explore with the Council members the possibility of legislation that would expressly accord the Council members Federal employee status for the purposes of the FTCA or the Westfall Act when they are acting to effect the Council's purposes and policies." The FBI also responded to the Council on the proposed Dispute Resolution Rule, suggesting that the Department's Office of Legal Counsel review the rule prior to publication in the Federal Register. Discussion of this proposal was tabled until later in the agenda. Other action items from the May meeting will be covered in reports from the Sanctions and the Standards Committees.

Meeting attendees in the gallery introduced themselves and the agency they represented. Agenda items were then addressed.

Topic #1 Standards Committee - Compact Record Screening Requirement

Committee Chairman Jeffrey Harmon presented this topic, reporting on the Standards Committee's progress at its September meeting. Chairman Harmon asked for the Council's input on the Committee's recommendations on a policy for screening records received from III for noncriminal justice purposes. The Committee expects to prepare a proposed rule for the Council's next meeting to include the following key points:

1. Where possible, have states utilize their existing state statutory guidelines, exe

2. Absent an existing state statute, the receiving state should screen out of state records in the same manner as they treat their own records for noncriminal justice purposes.

3. A criminal history record can be disseminated to a qualified state governmental entity - the state identification bureau need not necessarily be burdened with the screening.
4. The FBI should include the record screening policy in an MOU signed with a non-party state.
5. Regarding audit, audit criteria for record screening should be included in the policy.

Topic #2 Standards Committee - State Audit/Sanctions Criteria

Chairman Harmon presented this topic, reporting on the results of the Standards Committee meeting. The Committee spent much time reviewing the individual Audit Criteria with the corresponding NFF Qualification Requirement and Chairman Harmon reported there is substantial work to be put into this topic. Three key points from their review are:

1. The audit criteria should extend to the FBI requirements under NFF and the audit staff will look at the internal mechanisms that the FBI has used for audit in the past and include audit criteria for the FBI.
2. Current audit requirements include notations on what is and is not sanctionable. The Committee felt that all audit criteria should be sanctionable, leaving to the Sanctions Committee to determine what remedial action would result.
3. Within the audit criteria there is not a clear delineation between criteria and audit staff methodology. The committee recommended that the methodology be separated for a clearer statement of what measurement has to be attained in order to be in compliance with the criteria.

The Standards Committee discussed the NFF Qualification Requirements and corresponding Audit Criteria. At the Standards Committee meeting, Ms. Kathy Dillaman had pointed out that the NFF qualification requirements the Council approved at the May meeting for publication in the Federal Register contain an erroneous statement. In section IV, Accountability, State Responsibilities, part C, the last sentence refers to the Security Clearance Information Act (SCIA). This statement does not comply with current practices and should be removed prior to publication.

Compact Council Action:

Lt. Col. Harmon made a motion to remove the SCIA statement from section IV, part C of the NFF Qualification Requirements prior to publication in the Federal Register. Mr. William Casey seconded the motion. The motion carried.

TOPICS #4 AND #5 The Compact Fingerprint Requirement/Standards Committee - Discussion on Compact Council Authority Over Public Law 92-544

Chairman Rehmann introduced these topics, reviewing the discussion and motion from the last Council meeting and at the Standards Committee meeting. Chairman Rehmann's comments included that the Council has no dispute over the merit of emergency child placement and the CJIS Advisory Policy Board's resolution, but there is an apparent dispute over the larger issue of jurisdiction by the Department of Justice that the Council must address at some point.

Prior to presenting the Committee report, Chairman Rehmann welcomed guest speakers Judge Kathleen Kearney, Secretary of the Florida Department of Children and Family Services; Mr. Richard O'Hare, Michigan Department of Human Services; and Ms. Katherine Rector, Executive Secretary of Michigan CJIS Policy Council. The guests spoke to the need for access to criminal history record information by child services agencies in the emergency placement of children in foster care and their state's statutes which would permit such access. Judge Kearney's presentation included the last fiscal year's statistics on child abuse investigations and the temporary placement numbers for the state of Florida.

Lt. Col. Jeffrey Harmon stated that the request from Florida triggered the Compact Council's looking into the Compact's Article V fingerprint requirement. The Standards Committee Chair offered that there could be different ways that this identification requirement could be met. One way would be to establish a rule authorizing the delayed submission of fingerprints in cases involving the emergency placement of children. If the Council were to approve such a rule, the rule would serve as a framework under which Florida, and possibly other states, could request III name-based checks followed up by the submission of fingerprints. Council Chairman Wilbur Rehmann appointed an ad hoc committee (Lt. Col. Jeff Harmon, Ms. Donna Uzzell, and Mr. Paul Heppner) to draft a proposed rule for presentation to the Council during the afternoon session.

The ad hoc committee's proposed rule was thoroughly deliberated with the following key points (the resolution of each point follows in parentheses):

1. The need for a new purpose code to process these transactions.

2. The amount of time needed for the FBI to program for the new purpose code and for the III states to program for responding to this new purpose code.

(Mr. Rathbun explained that implementation of a new purpose code to handle noncriminal justice checks for the emergency placement of children affects the FBI and approximately forty III states, all of which will be responding to record requests. Mr. Rathbun estimated it would take four months to get a new purpose code up and running.)

3. How states other than Florida could request use of the new purpose code.

(States which have an existing P. L. 92-544 state statute involving the placement of children may submit a proposal to the FBI's Access Integrity Unit for approval to use the Delayed Fingerprint Submission Rule.)

4. The need for a P. L. 92-544 clause in the rule.

(The 92-544 clause was included in the Preamble to the Delayed Submission Rule.)

The discussion of these key points resulted in revisions to the proposed rule.

Compact Council Action:

Lt. Col. Jeffrey Harmon made a motion to accept the Ad Hoc Committee's proposed rule¹ as amended. Mr. Dennis DeBacco seconded that motion. After further discussion, Chairman Rehmann called for a vote. The motion carried unanimously.

Ms. Donna Uzzell then distributed copies of the Florida Proposal to the Council members.

Compact Council Action:

Mr. Paul Heppner made a motion to accept the Florida Proposal² for Delayed Fingerprint Submission. Lt. Col. Kolpa seconded the motion.

¹ See Attachment 1.

Lt. Col. Jeffrey Harmon stated that for the record, the Florida proposal should include Judge Kearney's information presented to the Council to provide proof of a risk to the health and safety of children and the emergency nature of these requests.

Revi

sion to the proposal as the result of other suggestions are as follows:

- Include in the title of the proposal a reference to the Compact Council rule for delayed fingerprint submission adopted on October 10, 2000
- The background subjects will be fingerprinted within 5 working days
- The fingerprint card will be forwarded to the FBI only if there's no identification at the state level
- The III checks will be done on all persons living in the household when a child is placed.
- The Council did not endorse name-based checks for other persons moving into the household after the initial emergency placement.

Both Mr. Paul Heppner, the maker of the motion, and Lt. Col. Marjorie Kolpa, who seconded the motion, agreed to the amendments to the Florida proposal. The motion passed unanimously.

The meeting was adjourned for the day.

October 11, 2000

After calling the meeting to order on Wednesday morning, Chairman Rehmann requested that the Council discuss three items related to the Rule on Delayed Fingerprint Submission and the Florida Proposal adopted the previous day. The first item for discussion was the method of publication desired by the Council. Council members agreed the policy should be placed in affect as quickly as possible.

Compact Council Action:

Lt. Col. Jeffrey Harmon made a motion that the FBI staff, at the earliest possible time, submit the rule for publication in the Federal Register and that the rule be effective immediately upon publication; and that the Chairman send a letter to the State Identification Bureaus advising them of the action the Council took in reference to this rule. Mr. Paul Heppner seconded the motion. Motion carried.

The second item Chairman Rehmann wished to discuss was Ms. Janet Jessup's request to have Florida, and any other states requesting Delayed Fingerprint Submission for emergency placement of children, to report back to the Council at its next meeting on the results of using the new rule.

Compact Council

Ms. Janet Jessup made a motion that Florida and any other state utilizing the Delayed Submission Rule report back to the Council at its next regular meeting. Lt. Clifford Daimler seconded the motion. Motion carried.

Chairman Rehmann stated that he would form an Evaluation Committee at the end of the meeting to be in contact with the states using the new rule. This Evaluation Committee would not need to meet necessarily but could be in contact telephonically with the states.

The third discussion item was the issue of the type of access (direct or through a law enforcement agency) to be provided to social services agencies to accomplish the III checks approved in the Council's rule. A lengthy discussion included the suggestion that the Council remain silent on the issue and let the FBI and the state CTO's work out the details on a state-by-state basis. Some state Compact Officers had issues with noncriminal justice agencies having direct access for this purpose and that their current state policy would not permit direct access for a noncriminal justice agency. It was also mentioned that the CJIS APB recommended direct access by these social services agencies.

Compact Council Action:

Mr. David Loesch made a motion to allow social services agencies direct access to III information for the emergency placement of children. Ms. Donna Uzzell seconded that motion.

The discussion continued that an agency could not install a terminal and hook up to the FBI without the assistance of the state CTO. Chairman Rehmann revisited Judge Kearney's comments that Florida has no problem with meeting the security audit requirement.

Lt. Col. Harmon offered an amendment to the motion that the Council interpret "direct access" to mean access by an agency directly to the National Identification Index without going through the Control Terminal Agency and the conditions under which "terminal access" would be granted would follow the same security requirements that the FBI's Access Integrity Unit presently enforces. The Council did not feel they should redefine direct access to conflict with the definition in the Compact itself. Further discussion included the need to amend the rule on delayed submission to take care of this access issue. Chairman Rehmann asked the Ad Hoc Committee to reconvene during a break to come up with a recommended solution. **Mr. Loesch withdrew his motion.**

Compact Council Action:

Lt. Col. Jeffrey Harmon made the motion that the Council amend the Delayed Submission Rule, adding an amendment to occur in the last paragraph under the subheading "Interpretation of Article V" to read, "The Compact Council further finds that a preliminary III name-based check may be made pending the receipt of a positive means of identification upon which the delayed submission is made. The

the state to enable them to conduct such checks. Such access must be made pursuant to the security policy set forth by the state's Control Terminal Agency."

Mr. David Loesch seconded the motion. Motion

TOPIC #3 Compact Council Sanctions Committee Report

Lt. Clifford Daimler presented the Sanctions Committee report. Lt. Daimler reported that the Council's Sanctions Committee met with the APB's Sanctions Subcommittee prior to the June APB meeting and the two groups agreed conceptually to develop the sanctions' process; that one single component of the FBI would complete the audits; discussed how to communicate sanctions to the states; the Committees would work cooperatively to determine and identify criminal justice matters rightfully belonging to the APB and regulatory matters to be handled by the Council. Lt. Daimler repeated an earlier statement that the Standards Committee has a lot of work to do before the Sanctions Committee can move forward and complete its work. A suggestion was made to combine the Standards and Sanctions committees; however, Chairman Rehmann stated that he wants to keep them separate as both committees have plenty of issues to deal with. Chairman Rehmann announced the adjusted membership of those committees as follows:

Sanctions Committee

Ms. Donna Uzzell - **Chair**
Major Mark Huguley
Mr. Allan Stanley
Mr. Dennis DeBacco

Standards Committee

Lt. Col. Jeffrey Harmon - **Chair**
Lt. Clifford Daimler
Ms. Kathy Dillaman
Mr. Gary Cooper

Draft 2 - D Proposed National Plan - Flat Fingerprint Based Applicant Background Checks

Mr. Bill Casey handed out the revised version of Draft 2-C that the Council had previously received and asked Council members to forward opinions to him to report back to the APB at its December meeting. Chairman Rehmann urged the FBI and the APB to make sure the Standards Committee is kept up to date on this topic. Lt. Col. Jeffrey Harmon stated the Standards Committee is not in a position to take any action as they did not receive the previous version Draft 2-C until two days prior to the Standards Committee meeting and could not get the topic on their agenda. Mr. Casey stated the topic would be put off until the next meeting.

TOPIC #6A Conducting III Inquiries on Persons Who Have Pawned Firearms

This topic was tabled until the next regular Compact Council meeting.

TOPIC #6B Expanded Use of III for Certain Crime-Related Firearms Returns

This topic was tabled until the next regular Compact Council meeting.

TOPIC #7 Proposed Amendment to the National Child Protection Act

Mr. Gary Cooper of SEARCH presented copies of the most recent version of the proposed amendment to the National Child Protection Act and spoke briefly about the following revisions:

1. Research for missing dispositions is encouraged but not required, due to resource demands on state repositories.
2. Criminal history records can go directly to qualified entities (if the state so permits) so that the entities can make the fitness determinations.
3. The full record may be made available to qualified entities including arrest information without dispositions. (This, too, is up to the individual state.)
4. A consent form is to be signed by the individual who's applying.

- ~
- willingly
5. A reasonable care standard and limited liability for knowingly and obtaining and misusing criminal history record information.
6. A request for grant monies to cover the fees related to volunteer background checks.

Mr. Cooper stated these proposed changes have been reviewed and endorsed by the APB, the FBI, and the SEARCH membership.

Compact Council Action:

Major Mark Huguley made a motion that the Compact Council endorse these changes. Mr. Paul Heppner seconded the motion. Motion carried.

TOPIC #8 Standards Committee - Discussion on Short/Long Range Compact Council Goals

Lt. Col. Jeffrey Harmon presented the Standards Committee request for a goal setting meeting in February or March 2001. The Committee suggested a facilitator assist the Council in setting short and long term goals. Chairman Harmon also requested that the Standards Committee meet either before or after the goal setting meeting. Further details will be forwarded to the Council when they become available.

Other Business

Chairman Rehmann shared with the Council an FBI response on the proposed rule on Dispute Adjudication suggesting that the rule be forwarded to the Department of Justice's Office of Legal Counsel (OLC) for further review. Mr. Emmet Rathbun explained that the Council could use the rule if necessary in the interim and the additional review could help the Council avoid having to amend the rule later on. Council members agreed to send the rule to OLC for further review and if by the May 2001 meeting OLC has not concluded its review the rule would be published at that time.

Mr. Cal Sieg, FBI Access Integrity Unit Chief, presented the following preliminary information on the numbers of states with statutes having potential applicability to the emergency placement of children: States with:

No statutes	15
Adoption statutes	18
Foster Care statutes	20
Services to Minors statutes	8
Child Care Facilities statutes	19
Services to Minors-Volunteers statutes	8

These numbers indicate this is not just a Florida-specific issue and the Council can anticipate multiple requests for delayed fingerprint submission in the emergency placement of children situations. Mr. Sieg will provide this information in

Major Mark Huguley requested for the next regular meeting of the Council, a discussion on the Code of Federal Regulations' definition of the administration of criminal justice and what constitutes a criminal justice agency. Mr. Dennis DeBacco requested an update on HUD's use of name checks in backgrounding potential residents. After a review of the current HUD practices, the Council could endorse the program or provide recommendations for improvement. Mr. DeBacco suggested a HUD representative be invited to attend the next Council meeting to discuss this issue.

Chairman Rehmann announced the membership of the newly formed Evaluation Committee which will correspond with Florida and any other states who use the delayed fingerprint submission rule for emergency placement. This Committee is to report back to the Council at its next regular meeting. Members are:

Evaluation Committee

Ms. Janet Jessup
Mr. Terrance Hoil

Chairman Rehmann also added Lt. Col. Marjorie Kolpa to the Dispute Adjudication Committee.

Following group pictures and a brief celebration of the Council's accomplishments during its inaugural year, the meeting was adjourned at 12:07 p.m.

RULE

The purpose of this rule is to interpret the Interstate Compact, U.S.C. Chapter 42 as it applies to the submission of fingerprints along with requests of III records by agencies authorized to access and receive criminal history records under Public Law 92-544.

INTERPRETATION OF ARTICLE V:

Article V of the Compact requires positive identification. The Compact Council further finds that the requirement for positive identification may be satisfied in two ways:

- 1) The means of positive identification should be submitted contemporaneously with the request for Criminal History Record Information, or
- 2) For purposes approved by the Compact Council a delayed submission of the positive means of identification may be permissible under exigent circumstances.

The Compact Council further finds that a preliminary III name based check may be made pending the receipt of the positive means of identification upon which the delayed submission is made. The state repository may authorize terminal access to authorized agencies designated by the state, to enable them to conduct such checks. Such access must be made pursuant to the security policy set forth by the states Control Terminal Agency.

APPROVAL OF DELAYED SUBMISSION REQUEST:

Once a specific proposal has been approved by the Compact Council, another state may apply for delayed submission consistent with that proposal through application to the FBI's Access Integrity Unit.

In evaluating requests for delayed submissions, the Compact Council must utilize the following criteria:

- 1) the risk to health and safety; and
- 2) the emergency nature of the request

The authorized agency may conduct a III name check pending submission of the positive means of identification.

The positive means of identification must be submitted within the time frame specified by the proposal as approved by the Compact Council.

Attachment #2

10/10/00

**REQUEST FROM FLORIDA TO COMPACT COUNCIL
UNDER THE DELAYED SUBMISSION RULE ADOPTED BY THE COUNCIL 10/10/00
PROPOSAL FOR III NAME CHECKS FOR EMERGENCY PLACEMENT OF
CHILDREN**

III name checks will be conducted in those cases where there is a consideration of placement of a child for emergency situations.

After a III name check, there will be a follow up fingerprint card when there is a placement of a child in a household with the subject of the check.

Fingerprints will be submitted as a follow up to III name-based record checks in these circumstances:

- For all III checks on persons who are living in a household when a child is placed.
- For all III checks where a child is not placed due to the existence of a III record, when the subject contests the record.

If any subject where a child is placed refuses to submit a fingerprint card, the child will not be placed or will be removed.

The subject(s) will be fingerprinted within 5 working days and the fingerprints will be immediately submitted to the State's Central Repository and to the FBI if required by the Compact.